

Before The  
**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In re Applications of )

JAMES A. KAY, JR. )

WT Docket No. 94-147

Licensee of one hundred sixty four Part 90 licenses )  
 in the Los Angeles, California area. )

To: The Honorable Richard L. Sippel, Presiding Officer

**PETITION FOR LEAVE TO INTERVENE**

Viking Freight System, Inc. ("Viking"), by its attorneys and pursuant to Section 1.223 of the Commission's Rules and Regulations, 47 C.F.R. § 1.223, hereby petitions the Commission for leave to intervene in the above-captioned proceeding, in support whereof, the following is shown:

On December 9, 1994 the Commission adopted the *Order to Show Cause, Hearing Designation Order and Notice of Opportunity for Hearing for Forfeiture* (FCC 94-315; released December 13, 1994), see also *Erratum* (mimeo 51344; released December 23, 1994) (hereinafter "*Designation Order*"), instituting the above-captioned proceeding. The *Designation Order* was published in the January 18, 1995, Federal Register (Vol. 60, No. 11), and this *Petition for Leave to Intervene* is being timely filed within 30 days of such publication. Nevertheless, in recognition of the fact that the procedural dates for this hearing have already been set, *Order* (FCC 95M-28; released February 1, 1995), Viking does not seek the right to participate in any way that will disrupt the already established schedule. Specifically, Viking does not seek the right to participate in discovery or to present evidence. Viking does seek leave to (a) be served with all official filings and orders in this proceeding, (b) to participate in cross-examination of witnesses (only to the extent the Presiding Officer decides to permit such cross-examination), and (c) to present proposed findings of facts and conclusions of law based on the evidence presented at hearing. This limited participation will permit Viking to protect its interest without disrupting the established schedule or prejudicing any party.

Viking is a local freight carrier operating throughout the western United States, including all parts of California. As part of its operations, Viking utilizes Part 90-licensed mobile radio facilities, including 450 and 850 MHz facilities in some of the same areas in which Mr. James A. Kay Jr. ("Kay") also holds authorizations. In the

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*Designation Order* the Commission determined that there was a substantial question of fact whether Mr. James A. Kay, Jr. ("Kay") has engaged in improper activities with respect to FCC licensing of mobile radio facilities in various areas in California. The allegations, if true, may mean that Kay has at various times obtained and/or retained mobile radio licenses to which he was not entitled under FCC rules and policies, or caused others to obtain and/or retain such licenses on his behalf.

As the Commission is aware, all radio spectrum in the Los Angeles area and in other metropolitan areas in California is highly congested and therefore an extremely scarce public resource. Many legitimate users, such as Viking, are precluded from expanding their system to meet business growth simply because the allocated spectrum is already assigned to other users. If Kay has in fact abused the Commission's licensing procedures as suggested in the *Designation Order*, then Viking clearly has been improperly denied the ability to expand its mobile radio systems to keep pace with its growing business needs. Moreover, if the Commission ultimately determines that Kay is not qualified to remain a Commission licensee, *Designation Order* at ¶ 10(g), and/or that one or more of his licenses have automatically canceled, *Designation Order* at ¶ 10(h), the end result could be to free mobile radio spectrum that could be used by Viking to expand its system.

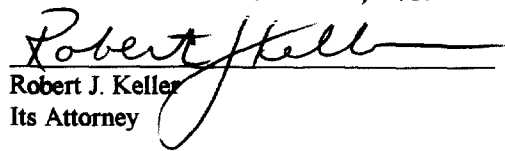
For these reasons, it is respectfully submitted that Viking is a party in interest with respect to this proceeding and should, pursuant to Section 1.223(a) of the Commission's Rules and Regulations, 47 C.F.R. § 1.223(a), be permitted to intervene. Alternatively, in light of the potential impact of this proceeding on Viking, the Commission should, in its discretion, pursuant to Section 1.223(b) of the Rules, permit Viking to intervene.

WHEREFORE, good cause having been shown, it is requested that Viking Freight System, Inc. be given leave to intervene and participate in WT Docket No. 94-147.

Respectfully submitted,

**VIKING FREIGHT SYSTEM, INC.**

By:

  
Robert J. Keller  
Its Attorney

**ROBERT J. KELLER, P.C.**

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 17th day of February, 1995, I have caused copies of the foregoing *Petition for Leave to Intervene* (submitted in WT Docket No. 94-147) to be sent by first class United States mail, postage prepaid, except as otherwise indicated below, to the following:

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Date: February 17, 1995